IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1386/2005

Decided on.25.7.2007

Secretary, HPSEB and another. **…Petitioners.**

Versus

Moti Ram and another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the petitioner : Mr. Shrawan Dogra, Advocate.

For the respondent\s Mr. Vishal Panwar, Advocate, for respondent No.1.

Rajiv Sharma, J.

A challenge has been laid by the petitioner-Board to the award dated 25.5.2005 passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 67/2003. The State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of Shri Moti Ram son of Sh. Karam Singh, daily wages beldar by the Executive Engineer, HPSEB, Division, Anni, District Kullu, H.P. w.e.f. 26.7.1995 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If no, what relief of service benefits the aggrieved workman is entitled to?"**

In sequel to the reference made by the State Government, respondent No.1 (hereinafter referred to as the workman for convenience sake) had filed the statement of claim. The workman had primarily taken

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

two points for determination by the Labour Court in his claim. Firstly, that he had completed 240 days preceding 12 calendar months at the time of his retrenchment up to 26th July, 1995 and could not be retrenched without complying with sub-clause (2) of Clause 14 of the Certified Standing Orders framed by the petitioner-board under the Industrial Employment (Standing Orders), 1946, secondly that the persons junior to him were retained at the time of effecting his retrenchment. The employer had filed the reply to the statement of claim. The employer had denied that the workman had completed 240 days preceding 12 calendar months at the time of his retrenchment and no workman junior to him was retained at the time of effecting his retrenchment. The Labour Court on the basis of the pleadings of the parties had made an award on 25.5.2005 in affirmative. The Labour Court had declared the retrenchment of the workman in violation of sub-clause (2) of Clause 14 of the Certified Standing Orders framed under Industrial Employment (Standing Orders), 1946 with a direction that the workman was entitled to reinstatement but without back wages.

Mr. Shrawan Dogra, Advocate had strenuously argued that the Certified Standing Orders framed by the Board under the Industrial Employment (Standing Orders) 1946 had ceased to apply in the year 1992 and the conditions of the service of the workman were to be governed under the Industrial Disputes Act, 1947.

Mr. Vishal Panwar, Advocate had supported the award dated 25.5.2005.

I have heard the learned counsel for the parties and perused the record.

It is evident from the award of the Labour Court that the workman had not completed 240 days preceding 12 calendar months at the time of

his retrenchment i.e. 26th July, 1995. Admittedly, the Certified Standing Orders framed by the employer under the Industrial Employment (Standing Orders), 1946 had ceased to apply after 1992. In view of this, the workman's case was not covered under the Certified Standing Orders. The finding recorded by the Labour Court that the case of the workman was covered under sub-clause (2) of Clause 14 of the Certified Standing Orders is incorrect and the same is liable to be set aside. The workman was entitled to get the protection of section 25-F of the Industrial Disputes Act, 1947 only if he had completed 240 days preceding 12 calendar months at the time of his retrenchment.

The workman had specifically pleaded before the Labour Court that at the time of his retrenchment i.e. 26th July, 1996, persons junior to him were retained thus he was entitled to get protection of section 25-G of the Industrial Disputes Act, 1947. The workman had appeared before the Labour Court as PW-1 and had testified that Sh. Sohan Lal, Jyoti Prakash and Sobha Ram were juniors to him but retained by the employer while retrenching him. Sh. Sarv Dayal Singh had appeared as RW-1 on behalf of the employer. He had denied that the workmen, namely, Sh. Ganga Ram, Tej Ram, Jyoti Prakash, Sohan Lal and Gulab Singh were retained by the employer. RW-1 had specifically deposed before the Labour Court that no seniority list has been prepared by the Board. He was not in a position to apprise the Labour Court about their seniority. The Labour Court had not gone into this aspect at all. Even if the workman had not completed 240 days, he was entitled to get the protection of Section 25-G of the industrial Disputes Act, 1947.

The upshot of the above discussion is that the Labour Court had wrongly applied the provisions of the Certified Standing Orders framed by the Board under the Industrial Employment (Standing Orders), 1946 qua

the workman. The Labour Court was bound to consider the plea raised by the workman that the persons junior to him were retained at the time of his retrenchment on 26th July, 1995.

Accordingly, the writ petition is partly allowed. The findings recorded by the Labour Court that the workman was entitled to protection of sub-clause (2) of Clause 14 of the Certified Standing Orders framed under the Industrial Employment (Standing Orders), 1946 are set aside. However, the matter is remanded back to the Labour Court to decide the plea raised by the workman that persons junior to him were retained at the time of his retrenchment on 26th July, 1995. The Labour Court will decide this issue and grant the workman appropriate relief after recording the finding in accordance with law within a period of three months from today. The parties are permitted to lead the evidence before the Labour Court. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 25, 2007
Awasthi